

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based upon the tangible personal property transferred incident to sales of service. See 35 ILCS 115/3. (This is a GIL.)

September 21, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 25, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We wish to have a Private Letter Ruling on the tax that should be paid on printed catalogs.

1) Statement of Facts:

We have been printing catalogs out of state and mailing them to our customers (schools, park districts, clubs, etc.) The majority of the catalogs (90%) are printed in STATE and then mailed directly from there. Only about 10% are sent to Illinois customers or our store.

In the past the printer would use a formula that we are not familiar with to calculate the tax. Something to do with ink and printing materials only. Then they would take the percentage of catalogs that were shipped into Illinois for the tax that they should collect. They would have records of my mailing list to back up what is shipped to Illinois and outside of Illinois.

Back in April of 2000 an agent for the Illinois Department of Revenue was conducting an audit of ABC OF CITY/STATE. He contacted us and questioned us as to whether or not we paid the tax on a particular invoice from ABC. It was a small job and shipped directly to the store. We did not pay the tax because we did not know if this is considered a Use

Tax. On the advice from our tax consultant we went back 36 months (made a guess calculation on the tax from any invoice from ABC that was shipped into the store or shipped to Illinois customers) and amended our tax returns and sent a check for \$3425.00. After talking with AGENT he said you should not have done that because this is not considered Use Tax. He said it is the printers responsibility to collect not for us to pay it. He also suggested that we re-amend those Tax Amendments and get the money back. I did and was credited the full amount back \$3425.00.

Shortly after that ABC contacted me with requesting the tax on several invoices that I was never taxed on. And I paid them.

Now my PRINTER of CITY/STATE informed us that they are no longer collecting tax in Illinois. Shortly after that I notified the Illinois Department of Revenue asking for advise. We have been back and forth since. I need a ruling on this matter. Is this consider Use Tax and if so how do I calculate this. We want to make sure we are properly paying the tax to your specifications.

2) Relevant Documents:

I have enclosed all paperwork, letters, and checks concerning this matter. Numbered 1 through 7 in chronological order.

3) Tax Period at Issue:

December 31, 2002

4) Previous Ruling:

XYZ has never had a ruling on this before.

5) Statement of Authority Supporting Tax Payers Views:

We do not have a view one way or the other. We would just like a clarification so we can remain current and correct.

6) Statement of Authority Contrary to Tax Payers Views:

The only statement we have is from PRINTER saying that they are no longer collecting it. Again we are just looking for clarification.

7) Trade Secrets:

None.

8) Signature:

Below.

I hope I filled this out to your specifications. Thank you for your time concerning this matter.

## **DEPARTMENT'S RESPONSE:**

I apologize for the delay in getting a response to you. Due to the limited information provided, as will be explained below, we are unable to issue a private letter ruling to you concerning this matter. However, I hope the following information will aid you in making a determination concerning your tax liabilities.

When an Illinois printing company contracts to print custom printed materials, a special order printing situation exists and the serviceman (printer) is subject to tax under the Service Occupation Tax Act. The customer's liability depends upon the manner in which the printer handles this tax liability. Transactions with out-of-State printers involve additional considerations. See 86 Ill. Adm. Code 140.101, regarding Service Occupation Tax liability. We do not have sufficient information to determine your company's liability, if any, but we hope the following information is helpful.

When a printing company produces and sells custom printed materials, it is engaged in special order printing. Under Illinois tax law, the transfer of special order printing materials is a service transaction that may result in either Service Occupation Tax or Use Tax liability for the special order printer. For your general information see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. A serviceman's liability may be calculated in one of four ways: 1. separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

In regards to the first three methods, service customers incur corresponding Service Use Tax liability which is required to be collected by the serviceman. In the fourth method listed above, a Use Tax liability is incurred by the serviceman, and no liability is incurred by his service customer. For this reason, this type of serviceman has no legal authority to collect a "tax" from his service customer. However, it is not uncommon for servicemen to enter into private contractual arrangements requiring customers to "reimburse" them for their tax liability. This is a business decision between the servicemen and their customers, and does not change the legal incidence of the tax liability.

These transactions often become extremely complicated when out-of-State printers are involved, since such printers generally incur neither Service Occupation Tax or Use Tax. Without knowing the tax base on which the serviceman calculates his or her tax liability, we are unable to specifically state whether you incur Service Use Tax liability, or whether it is the printer that incurs Use Tax liability.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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